

(2010) 12 P&H CK 0136

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3187 of 2009 (O and M)

Kewal Krishan

APPELLANT

Vs

Dr. Paramvir Kaur

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : (2010) 12 P&H CK 0136

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—This revision is directed against the orders of Rent Controller dated 26.4.2008 and the Appellate Authority dated

28.2.2009.

2. The Petitioner, who is the tenant in the premises in question faced eviction proceedings on a petition being filed by Respondent-landlord under

the Provision of Section 13 of the East Urban Rent Restriction Act. The Respondent has set up a case that originally property belong to one

Gurmail Singh from whom it was purchased by the present Respondent in the year 1996. The Rent note in favour of the Petitioner was executed

by the erst while owner in the year 1970 for running a petrol pump. The eviction was passed on the ground

(i) that the Petitioner has ceased to occupy the premises w.e.f. 1999;

(ii) that the Petitioner has changed the nature of the premises from commercial to residential and has raised construction of permanent nature

without consent of the owner;

(iii) non-payment of rent.

3. The Petitioner denied the existence of relationship of landlord and tenant but admitted the tenancy under Gurmail Singh. He pleaded that no

notice of the change of ownership was ever issued and further contended that the petrol pump had been set up in the year 1970 and was being run

thereafter by him. He contended that the Respondent has no right to pursue the case and has also denied that there was any change of user and

any construction has been made by him without the instruction of landlord.

4. The following issues were framed:

1. Whether the Respondent is a tenant under the Petitioner? OPP

2. Whether the tender made by the Respondent is short and invalid? OPP

3. Whether the Respondent has changed the user of the premises? OPP

4. Whether the Respondent ceased to occupy the premises for more than four months with any reasonable cause w.e.f. 26.5.1999? OPP

5. Whether the Respondent has impaired the value and utility of the demised premises? OPP

6. Whether the Petitioner is not maintainable in the present form? OPR

7. Relief.

5. Both the Rent Controller and the First Appellate Authority, concluded that the Petitioner had ceased to occupy the premises and the business

which he was running earlier has ceased to function. It was also held by the Court that the Petitioner had changed the nature of the premises from

residential to commercial. So far as the payment of rent is concerned, the same having been deposited this ground was rendered redundant.

Aggrieved by the findings recorded by the Rent Controller and the First Appellate, the Petitioner is in revision wherein he has questioned the

findings recorded by the Courts below. He has contended that concededly there was no notice issued by the Respondent to him intimating him

regarding the change of ownership. He also contended that the tenancy was under Gurmail Singh and there was no relationship between the

Petitioner and the Respondent. In so far as the cessation of the business activity is concerned, it was contended that there was a dispute going on

between him and the Petroleum Authority regarding the outlet which he was running and that this did not amount to cessation of occupation of the

premises.

6. Reliance was placed upon Sh. Amar Nath v. Guru Ram Dass Textile Mills (Paul Silk Industries) and Anr. 130 (2002-1) The Punjab Law

Reporter 75 and Gaiinda Ram and Ors. v. L.C. Narula and Anr. 130 (2002-1) The Punjab Law Reporter 82.

7. On the other hand learned Counsel for the Respondent contended that in view of the evidence on record and the Petitioner having admitted that

he has ceased to function the petrol outlet there was no infirmity in the findings recorded by the Rent Controller and by the First Appellate

Authority. He further contended that there was overwhelming evidence on record to show that the Petitioner was residing along with his family in

the premises in question, inspite of the fact that the premises was let out to him only for the purpose of running a petrol pump.

8. After hearing learned Counsel for the parties and having perused the judgments and other relevant material placed before this Court, I am of the

opinion that the petition does not merit any acceptance as the premises were let out to the Petitioner for running a petrol retail outlet and which

according to the own saying of the Petitioner himself has stopped functioning w.e.f. 1999. The contention of learned Counsel for the Petitioner that

stoppage of business activity for a short period does not amount to cessation of occupation of the premises is untenable in view of the fact that a

period of 10 to 11 years cannot be said to be a period which may be termed as transitional. It reflects and indicates a permanent cessation and the

Petitioner cannot make justifiable grouse against the findings recorded by the Rent Controller and the Appellate Authority. That apart it has also

come on record that the Petitioner is residing on the premisses after the business of running the petrol pump had stopped. This in itself is the

violation of condition of tenancy as the premises were clearly let out to him for commercial purpose and the Petitioner was thus not justified in

converting the same for his residential purpose. There is thus no merit in the revision petition and the same deserves to be dismissed.

9. At this stage, learned Counsel for the Petitioner prays for sometime to seek instructions as to whether the Petitioner is willing to vacate the

premises and hand over the physical vacant possession thereof to the Respondent within a reasonable time subject to his furnishing an undertaking

before the learned Rent Controller to that effect.

10. Adjourned to 10.12.2010 to enable the counsel for the Petitioner to seek instructions.